APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/420,503	10/18/1999	CAMERON STUART BIRSE	004860.P2434	2896

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EXAMINER
VU, THONG H

ART UNIT	PAPER NUMBER
2142	

DATE MAILED: 11/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	09/420,503	BIRSE ET AL.
	Examiner	Art Unit	
	Thong H Vu	2142	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>23 June 2003</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-15</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-15</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

13)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application)
since a specific reference was included in the first sentence of the specification or in an Application Data Sheet.
37 CFR 1.78.

    a) ☐ The translation of the foreign language provisional application has been received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific
reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .

4)☐ Interview Summary (PTO-413) Paper No(s). _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: .

1.   Claims 1-15 are pending.

2.   Applicant's arguments with respect to claims 1-15 have been considered but are

moot in view of the new ground(s) of rejection.

Double Patenting

Claims 1-15 rejected under the judicially created doctrine of double patenting

over claims 1-30 of U. S. Patent No. 5,764,992 since the claims, if allowed, would

improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the

patent and is covered by the patent since the patent and the application are claiming

common subject matter, as follows: a method for updating software or operating system

on server which subsequently updated the client machines on network.

Patent '992 does not detail a client machine causing a plurality of network client

computers are booted to received an updated software. It was clearly that in the well-

known art when the operating system software on server is updated by itself or by a

remote computer then the other client computers would be updated [see Craig

reference]

Furthermore, there is no apparent reason why applicant was prevented from

presenting claims corresponding to those of the instant application during prosecution of

the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158

USPQ 210 (CCPA 1968). See also MPEP § 804.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3.   Claims 1-15 are rejected under 35 U.S.C. § 103 as being obvious over Lundin et

al [Lundin 5,339,430] in view of Craig et al [Craig 6,266,809 B1].

4.   As per claim 1, Lundin discloses a method comprising a network computer (NC)

client that is configured differently than a first operating system software in effect by

replacing a first set of one or more system volumes maintained at a NC server

containing the first operating system software with a second set of one volume (or more

system volumes) maintained at the NC server containing second operating system

software [Lundin, a software (i.e.: operating system software) is modified, replaced by a

new version by using object-oriented programming technique, abstract]. It was clearly

that the object-oriented programming allows the first computer (i.e.: client computer)

could initiate the replacing software on the second computer (i.e.: server computer) or

reverse.

Lundin does not teach in detail causing a plurality of NC clients are booted to

receive operating system software. It is well-known in the art that the operating software

(i.e.: firmware) on network computers could be updated by the boot image on a network

server as taught by Craig.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the technique of updating the network computers by the boot image on server as taught by Craig into the Lundin's apparatus in order to implement the technique of modified and replaced software between computers. Doing so would reduce the management requirements fro a computer network and provide a dynamic, efficient and friendly approach to updating software on the network client computers.

5.   Claims 2,3,11-14 and 15 contain similar limitation set forth the rejected claimed 1. Thus, claims 2,3,11-14 and 15 are rejected for the same rationale set forth in claim 1.

6.   As per claims 4,7,9 Lundin-Craig disclose the NC client causing those of the plurality of NC clients that subsequently open an application to utilize a modified version of the application by replacing the first set of one or more system volumes, wherein the first set of one or more system volumes further comprises application software which is equivalent to the modified software copy or the partially replaced software.

7.   As per claim 5, Lundin-Craig disclose wherein at least one NC client is not rebooted for a period of time after replacing the first set of one or more system volumes as inherent feature or regenerating object code or booting process.

8.   As per claims 6,8,10 Lundin-Craig disclose the operating software as UNIX and MS-DOS as inherent features of operating software.

9.   Claims 1-15 are rejected under 35 U.S.C. § 103 as being obvious over Kullick et al [Kullick 5,764,992] in view of Craig et al [Craig 6,266,809 B1].

10.   As per claim 1, Kullick discloses a method comprising a network computer (NC)

client that is configured differently than a first operating system software in effect by

replacing a first set of one or more system volumes maintained at a NC server

containing the first operating system software with a second set of one volume (or more

system volumes) maintained at the NC server containing second operating system

software [Kullick, a software (i.e.: operating system software) is automatically replaces

itself by a new version, the new version is replaced an older version can reside on the

client computer or server, abstract].

Kullick does not teach in detail causing a plurality of NC clients are booted to

receive operating system software. It was well-known in the art that the operating

software (i.e.: firmware) on network computers could be updated by the boot image on a

network server as taught by Craig.

Therefore, it would have been obvious to one having ordinary skill in the art at

the time the invention was made to incorporate the technique of updating the network

computers by the boot image on server as taught by Craig into the Kullick's apparatus

in order to implement the technique of modified and replaced software between

computers. Doing so would reduce the management requirements fro a computer

network and provide a dynamic, efficient and friendly approach to updating software on

the network client computers.

11.   Claims 2,3,11-14 and 15 contain similar limitation set forth the rejected claimed

1. Thus, claims 2,3,11-14 and 15 are rejected for the same rationale set forth in claim 1.

12.   As per claims 4,7,9 Kullick-Craig disclose the NC client causing those of the

plurality of NC clients that subsequently open an application to utilize a modified version

of the application by replacing the first set of one or more system volumes, wherein the

first set of one or more system volumes further comprises application software which is

equivalent to the modified software copy or the partially replaced software.

13.   As per claim 5, Kullick-Craig disclose wherein at least one NC client is not

rebooted for a period of time after replacing the first set of one or more system volumes

as inherent feature or regenerating object code or booting process.

14.   As per claims 6,8,10 Kullick-Craig disclose the operating software as UNIX and

MS-DOS as inherent features of operating software.

15.   Any inquiry concerning this communication or earlier communications from the
examiner should be directed to examiner Thong Vu, whose telephone number is (703)-
305-4643.
The examiner can normally be reached on Monday-Thursday from 8:00AM- 4:30PM.
        If attempts to reach the examiner by telephone are unsuccessful, the examiner's
supervisor, David Wiley, can be reached at (703) 308-5221.
        Any inquiry of a general nature or relating to the status of this application should
be directed to the Group receptionist whose telephone number is (703) 305-9700.
        Any response to this action should be mailed to: Commissioner of Patent and
Trademarks, Washington, D.C. 20231 or faxed to :
                        After Final   (703) 746-7238
                        Official: (703) 746-7239
                        Non-Official   (703) 746-7240
        Hand-delivered responses should be brought to Crystal Park 11,2121 Crystal
Drive, Arlington. VA., Sixth Floor (Receptionist).

Thong Vu
Patent Examiner
Art Unit 2142